

2010 Unemployment Insurance (UI) Reform Bill

BENEFIT IMPACTS

June 7, 2010

CONTEXT of S.290 ... An Act Related to Restoring Solvency to the Unemployment Trust Fund

- Failure to act this year will result in borrowing exceeding \$163 million by the end of 2011.
- The total cumulative impacts over the next 10 years from doing nothing meant:
 - \$81 million in interest payments
 - \$172 million in FUTA tax payments by ALL Vermont employers
 - Total borrowing exceeding \$257 million.
- A comprehensive solution needed to include a combination of tax increases and benefit reductions.
- This compromise gets the fund back in the black in 5 years.

MAXIMUM WEEKLY BENEFIT AMOUNT

The maximum weekly benefit amount an unemployed worker can receive remains frozen at \$425 while we are borrowing (current law). It will resume increasing when the trust fund is solvent (balance greater than zero and loans repaid), which is projected to be July 2015. To help make up for the lost increases, the maximum amount will become 57% of the overall average annual wage upon return to tax rate schedule III.

- NOTE: In 2008, only 23% of claimants received maximum amount; average was \$312 per week.

MAXIMUM NUMBER OF WEEKS TO BE CLAIMED IN A BENEFIT YEAR

- **Effective July 1, 2011**
Variable duration will impact new claims effective after July 1, 2011. This means, the maximum number of weeks that can be claimed in a benefit year will vary. A claimant will be eligible for an amount equal to 26 weeks times their weekly benefit amount or 46% of the “base period” wages, which ever is less.

NOTES: Claimants, who work a full year, every year, should not be affected by this change. An [example of a “base period”](#) is subsequently provided in this document.

WAITING PERIOD

- **Effective July 1, 2012**
All new claims established with an effective date of July 1, 2012* and thereafter will be required to file an otherwise payable claim that will be considered a “waiting period”. This means, a person claiming UI benefits will have to wait one week after they are laid off to collect. They will be entitled to the maximum number of weeks thereafter, just delayed by 1 week. Claimants will not be paid for the waiting period claim, unless such week follows weeks disqualified as a result of receiving severance pay.

NOTES: In most cases, workers are paid in arrears, meaning they are getting their last pay check during the first week of being unemployed. An [example of a calendar](#) depicting this is subsequently provided in this document. Studies have shown that a one-week waiting period positively impacts return-to-work rates. Vermont is one of only 12 states that did not have a waiting period.

* Waiting periods will no longer be required effective July 1, 2017, or when the trust fund balance is greater than zero, whichever is later.

MISCONDUCT ([Definitions and examples of misconduct](#) is subsequently provided in this document.)

- **Effective May 24, 2010**

- ❖ **Being fired for misconduct** can now result in a disqualification of up to a 15 week delay, after which the fired employee can still collect UI. Previously 12 was the maximum number of weeks an employee could be disqualified.

Misconduct is currently defined as “willful and culpable neglect of an employer’s interest”, which the employer has the burden to demonstrate. It is NOT a single event of showing up late, but rather repeated negative behavior, usually with warning by the employer. There are three levels of appeals should either party disagree with VDOL’s findings. A lawyer is not required.

- ❖ **A definition for gross misconduct** has now been added to the statute. Examples include but are not limited to: theft; fraud; intoxication; intentional serious damage to property; intentional infliction of personal injury; any conduct that constitutes a felony; or repeated incidents after written warning of either of the following: unprovoked insubordination or public use of profanity.

- **Effective for new claims filed after July 1, 2011**

- ❖ **Being fired for misconduct** will lead to a cap on the maximum number of weeks to be claimed in a benefit year, not to exceed 23 full weeks.
- ❖ **Being fired for gross misconduct** will prohibit the use of wages earned from firing employer for calculation of claimant’s weekly benefit amount.

SEVERANCE PAY

- **Effective for new claims filed after July 1, 2011**

Claimant who received severance pay upon separation will be disqualified, meaning they will not be able to receive an unemployment benefit for the same time they have received severance pay. However, claimants will still be able to collect their maximum duration of benefits, but only after the severance is used.

EXEMPTED PART-TIME EARNINGS

- **Effective July 1, 2012**

All new claims established with an effective date of July 1, 2012 and thereafter will have a new system to exempt \$40.00 or 30% of gross wages earned (whichever is greater). Advantages to new system include: smoother transition to full-time employment; removing the existing cliff; and greater incentive for claimant to accept full-time work rather than limiting to part-time.

Example: A person who was filing and getting \$400 in unemployment benefits and then finds part-time work and earns \$200, will receive \$260 in unemployment PLUS the \$200 earned from working. More [examples of working part-time](#) is subsequently provided in this document.

ENHANCED ASSISTANCE TO UI CLAIMANTS

- **Effective July 1, 2011**

This provision codifies in law, enhanced efforts by VDOL to help assist unemployment claimants in getting back to work, including making these services a priority in regional offices. VDOL shall implement re-employment services in regional offices utilizing available grants or other resources. Further, claimants will be required to participate in re-employment services when directed.

Base Period

Defined in 21 V.S.A. 1301 (17)(A)

(17)(B) For benefit years beginning on January 3, 1988 and subsequent thereto the "base period" shall be the period made up of the **first four of the most recently completed five calendar quarters** immediately preceding the first day of a claimant's benefit year, and for any individual who **fails to meet the eligibility** requirements of section 1338 of this title in this base period, the commissioner shall make a redetermination of entitlement based upon a base period which consists of the **last four completed calendar quarters** immediately preceding the first day of the claimant's benefit year.

(C) For any individual who fails to qualify for benefits under subdivision (B) above, the commissioner shall make a redetermination of entitlement based upon a base period which consists of the **last three completed calendar quarters and all wages paid prior to the effective date** of the claimant's initial claim in the calendar quarter in which the initial claim was filed.

Example:

	Completed Quarters wages paid that are used in calculating weekly benefit amount					↓ Claim filed here ↓ (any time during 1st qtr 2010)
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	
Method 1	Oct - Dec 2008	Jan - Mar 2009	Apr - Jun 2009	July - Sept 2009		Current Qtr
Method 2		Jan - Mar 2009	Apr - Jun 2009	July - Sept 2009	Oct - Dec 2009	
Method 3			Apr - Jun 2009	July - Sept 2009	Oct - Dec 2009	Jan up to claim effective date

In this example, if the individual filed a new claim during January, February, or March in 2010, calculation of the weekly benefit amount would use wages paid to the individual during October, November, and December of 2008 and all wages paid during January 2009 through September of 2009.

If the individual is found ineligible for benefits, we would move to "Method 2", using all wages paid in 2009.

If the individual is still ineligible, we would move to "Method 3", using all wages paid during April 2009 through December of 2009, and all wages paid up to the effective date of the initial claim filed.

Example of how waiting periods will impact receipt of unemployment

MARCH 2010

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
				Laid off		
7	8	9	10	11	12	13
	Opens UI Claim			Rec's last paycheck		Waiting period claim
14	15	16	17	18	19	20
Files waiting period claim			Receives WP credit for w/e 3/13			1st payable week
21	22	23	24	25	26	27
Files 1st payable wk	Returns to work		Receives pymt for w/e 3/20			
28	29	30	31			
				Rec's 1st paycheck		

“MISCONDUCT” AS IT RELATES TO DISQUALIFICATION FOR UNEMPLOYMENT BENEFITS

Vermont’s unemployment law recognizes two types of misconduct as disqualifying; simple misconduct and gross misconduct. Discharge for inability to meet performance standards is generally not considered misconduct.

SIMPLE MISCONDUCT

Definition: Simple misconduct is work related conduct that is in substantial disregard of an employer’s interests. Such conduct may be willful or intentional, but it may also be unintentional conduct that results from extreme carelessness, indifference, or lack of effort. Simple performance deficiencies will generally not be considered misconduct. Employers will generally be expected to provide employees notice and an opportunity to improve their conduct, except in extreme cases. The misconduct **MUST** be work related; off-duty conduct is generally not the basis for a finding of misconduct.

Written warnings are often the best method for advising and documenting the worker’s need to improve conduct.

Consequence: Disqualification from receiving benefits for up to 15 weeks, with a minimum of 6 weeks, from the time the unemployment claim is filed. The employer’s experience rating record is relieved of charges, provided the initial request for information was received in a timely manner.

Examples:

- Repeated tardiness or unexcused absences;
- Rudeness to customers or other employees;
- Insubordination;
- Intentional misrepresentation on a job application.

GROSS MISCONDUCT

Definition: Gross misconduct is work related conduct that demonstrates a flagrant and wanton disregard of an employer’s interests. 21 V.S.A §1344 defines gross misconduct as:

“For purposes of this section, “gross misconduct” means conduct directly related to the employee’s work performance that demonstrates a flagrant, wanton, and intentional disregard of the employer’s business interest, and that has direct and significant impact upon the employer’s business interest, including but not limited to theft, fraud, intoxication, intentional serious damage to property, intentional infliction of personal injury, and conduct that constitutes a felony, or repeated incidents after written warnings of either unprovoked insubordination or public use of profanity.”

Written warnings are often the best method for advising and documenting the worker’s need to improve conduct.

Consequence: Total disqualification from receiving benefits until the claimant once again secures employment and works long enough to earn the equivalent of 6 times their weekly benefit amount. The employer’s experience rating record is relieved of charges, provided the initial request for information was received in a timely manner. Effective July 1, 2012, wages earned from the employer against whom the gross misconduct was committed are excluded from use in computing the weekly benefit amount.

Examples:

- Loss or damage of property due to extreme carelessness or indifference;
- Use of company vehicle to run personal errands while on the clock, when the employee is supposed to be conducting company business;
- Creating a hostile workplace environment through repeated insubordination or continued use of profane language;
- Refusing to participate in an employer-mandated safety exercise;
- Failure of an employee in charge of adult sexual offenders to maintain close physical proximity to their charges at all times while they were in certain public places.
- Inappropriate behavior by employee when handling or supervising children;
- Unprovoked outburst when asked to move from a preferred workstation to a different station that the employer needs and inappropriate behavior detrimental to the employer's business;
- Heavy equipment operator ignoring safety protocols, after warnings, when the safety violation leads to an accident or property damage;
- Employee discharged after yelling at supervisor and using the F-word within proximity of children in his charge at the time.

PERFORMANCE

Generally speaking, performance deficiencies will not be considered misconduct. An employer may certainly choose to fire an employee for being a slow learner, or for not performing tasks quickly or carefully enough. However, the department will not consider this misconduct unless the employer can demonstrate deliberate indifference, malingering, or complete lack of effort on the employee's part.

Working part-time

A person who is working part-time is often able to collect a partial benefit.

Two factors:

- The maximum weekly benefit amount
- The amount of gross wages earned

The amount of benefit entitlement is determined by first calculating the amount of earnings that is disregarded (subtracted from gross wages earned), which reveals the adjusted earnings.

Once the adjusted earnings are determined, it (adjusted earnings) is subtracted from the weekly benefit amount, arriving at the amount of payable benefit.

Objective in proposed change: Create an incentive to work part-time without creating a disincentive to accept full-time work.

Example 1:

- ~ Works 20 hours at \$12.00 per hour, earning a total of \$240.00 for part-time employment.
- ~ Worker is filing and receiving unemployment benefits.
- ~ If no work was performed, worker would receive UI amount of \$409.00.

Current disregarded amount:

30% of WBA = \$122.70

Proposed disregarded amount:

15% of gross wages = \$36.00

Current Income			Amt if clt worked full time
Wages	UI amount	Total Income	
\$240.00	\$292.00	\$532.00	\$480.00

Proposed change			Amt if clt worked full time
Wages	UI amount	Total Income	
\$240.00	\$205.00	\$445.00	\$480.00

Example 2:

- ~ Works 20 hours at \$10.00 per hour, earning a total of \$200.00 for part-time employment.
- ~ Worker is filing and receiving unemployment benefits.
- ~ If no work was performed, worker would receive UI amount of \$348.00.

Current disregarded amount:

30% of WBA = \$104.40

Proposed disregarded amount:

15% of gross wages = \$30.00

Current Income			Amt if clt worked full time
Wages	UI amount	Total Income	
\$200.00	\$252.00	\$452.00	\$400.00

Proposed change			Amt if clt worked full time
Wages	UI amount	Total Income	
\$200.00	\$178.00	\$378.00	\$400.00